IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

MFA.No. 1000 of 2001(D)

OPMV.2616/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA

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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LTD., BRANCH OFFICE, VADAKARA, REP. BY THE ASSISTANT MANAGER, MOTOR THIRD PARTY CLAIMS CELL, REGIONAL OFFICE, NORTH RAILWAY STATION ROAD, ERNAKULAM, COCHIN 682 018.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS/PETITIONER AND RESPONDENTS 1 AND 2:

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1. P.V.SHAFEEQUE, S/O.IBRAHIM, PEEDIKAVALAPPIL HOUSE, KURUVANGAD AMSOM, KURUVANGAD DESOM, KOYILANDY TALUK.

2. VADAKKE PUNNACHALIL MAJEED, S/O.AMMED, CHERUVANNUR AMSOM, PAMBIRIYAR DESOM, CHERUVANNUR.

3. MADATHIL ABDURAHIMAN, S/O.KUNHIMOIDEEN HAJI, P.O.MELADY, PAYYOLI.

R3 BY ADV. SRI.C.VALSALAN
SRI.P.M.MUHAMMED RAHAZ

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.1000 of 2001

Dated, this the 17th day of December, 2007

JUDGMENT

This appeal is filed by the third respondent insurer in O.P.(MV) No.2616/1995 on the file of the Motor Accidents Claims Tribunal, Vadakara. First respondent filed Original Petition claiming compensation alleging that he sustained in a motor vehicle accident. Respondents 2 and 3 were impleaded as owner and driver of the vehicle. Appellant was impleaded as the insurer of the vehicle. The contention of the appellant was that there was no valid policy of insurance on the date of accident. Tribunal accepted that contention and found that though the appellant had issued a policy the same expired and on the date of accident vehicle was not covered by a policy at all. Tribunal also found that it is the respondents 2 and 3 were jointly and severally liable for the amount of compensation payable. But finally the Tribunal passed an award by which the appellant insurer was directed to pay the amount of compensation and then recover the same from the owner and driver of the vehicle. Such a direction can be issued only in cases where there is violation of policy conditions. In this case there was no valid policy of insurance at the time of accident. So the direction issued by the Tribunal directing the appellant insurer to pay the compensation amount and then recover the same from the owner and driver is illegal and unsustainable.

In the result, appeal is allowed in part. The direction issued by the Tribunal

that the appellant insurer shall pay the compensation amount and then recover the same from the owner and driver alone is hereby set aside. The appellant is not liable to deposit the amount. The first respondent can realise the amount from the owner and driver of the vehicle. Award passed by the Tribunal in all other aspects is confirmed.

C.M.P.No.7406/2001 in M.F.A.No.1000/2001 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.1000 of 2001

JUDGMENT

17th December, 2007.